NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CACR06-1267

June 6, 2007

JAMES E. ATCHISON APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NOS. CR-97-600; CR-04-424; CR-04-425; CR-04-496]
V.	HON. JAMES R. MARSCHEWSKI, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant pled *nolo contendere* to a charge of residential burglary and guilty to charges of second-degree battery, commercial burglary, and overdraft. In addition to sentences imposed for those offenses, imposition of additional periods of imprisonment was suspended upon conditions of good behavior. Subsequently, a petition to revoke the suspensions was filed, alleging that appellant violated the conditions by committing new criminal offenses. At the revocation hearing, evidence was presented to show appellant's involvement in one attempted burglary and two completed burglaries. The trial court revoked appellant's suspensions and sentenced him to 108 months in the Arkansas Department of Correction. On appeal, appellant asserts that the evidence was insufficient to support the revocation. We disagree, and we affirm.

In a revocation proceeding, the State must show by a preponderance of evidence that the defendant inexcusably violated a condition of his suspension; the State need only prove one violation of the conditions for the trial court to revoke. *See Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003). When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of a suspended sentence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Id.*

At the revocation hearing, Officer Joey Boyd of the Fort Smith Police Department testified that, on May 7, 2006, he was dispatched to the Circle Inn bar in response to a report of a burglary in progress. Officer Boyd's dispatcher advised him that an employee had telephoned from the inside of the bar to report that he could hear someone trying to break in through the wall of the bar. Upon arriving at the scene, Officer Boyd was met by the bar employee, who indicated that the suspect was around back of the building. Officer Boyd rounded the corner and saw appellant standing there with a pickax in his hand. Officer Boyd, who was in uniform, identified himself to appellant. Upon seeing the police officer, appellant immediately turned and ran, dropping the pickax. Officer Boyd gave chase, and, after a pursuit of approximately 150 yards, appellant tripped and was apprehended. Upon returning to the

Circle Inn, Officer Boyd observed that a hole had been made in the wall of that establishment. Several cinder blocks had been knocked out of the wall at the place where the pickax was found, together with a crowbar and hammer.

Appellant argued at the hearing that this evidence, at most, showed an attempted burglary, and should therefore not be considered in deciding whether appellant had violated the conditions of his suspension. That argument is meritless. It is well established that revocations may be based on lesser-included offenses. In *Davis v. State*, 308 Ark. 481, 825 S.W.2d 584 (1992), our supreme court upheld a revocation on proof that the appellant committed first-degree sexual abuse, a lesser-included offense of the crime of rape that had been charged in the petition. The court stated:

> We have upheld revocations based on lesser included offenses. In *Selph v. State*, 264 Ark. 197, 570 S.W.2d 256 (1978), the appellant was charged with committing burglary in violation of a condition of his suspended sentence. The Court recognized the evidence at the hearing was insufficient to show entry into a building. It was sufficient, however, to show the lesser included offense of breaking or entering which itself constituted a violation of the terms of the suspended sentence.

Id. at 489-90, 825 S.W.2d at 589.

Here, appellant was seen with pickax in hand at a place where a hole had been made in the structure of a commercial building, and other tools capable of being employed to gain entry by breaking were found where he was standing. Evidence of appellant's intent to commit a crime punishable by imprisonment is found in the testimony that appellant fled when confronted by a uniformed police officer. We have long held that flight is evidence of felonious intent, *see,*

e.g., Cristee v. State, 25 Ark. App. 303, 757 S.W.2d 565 (1988), and, because of the difficulty in ascertaining a person's intent by direct evidence, a presumption exists that a person intends the natural and probable consequences of his acts. *Alexander v. State*, 78 Ark. App. 56, 77 S.W.3d 544 (2002). On this record, the trial court could have found that no reasonable explanation other than an attempt to commit burglary could account for appellant's actions with regard to the Circle Inn bar. We hold that the finding that appellant violated the conditions of his suspension by committing an offense punishable by imprisonment is not clearly against the preponderance of the evidence.

Appellant advances additional arguments with respect to the trial court's findings that he also violated the conditions of his suspension by burglarizing other businesses. However, the State need prove only one violation of the conditions to revoke a suspension and, in light of our holding that there was sufficient evidence of attempted burglary, we need not address those arguments.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.